STATE OF MICHIGAN

COURT OF APPEALS

PHILIP M. SORENSEN, M.D. and ADVANCED PAIN MANAGEMENT,

Plaintiffs-Appellants,

v

SPARROW HOSPITAL AND HEALTH SYSTEM, INC., RONALD PAUL SWENSON, M.D., ALENA FABIAN, M.D., SUBHASH GUPTA, M.D., and LANSING ANESTHESIA ASSOCIATES, P.C.,

Defendants-Appellees.

UNPUBLISHED
November 7, 1997

No. 186702
Ingham Circuit Court
LC No. 94-079250-CZ

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal by leave granted the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Marcelletti v Bathani*, 198 Mich App 655, 658; 500 NW2d 124 (1993).

We first conclude that summary disposition was properly granted against plaintiffs' tort and contract claims under *Hoffman v Garden City Hosp-Osteopathic*, 115 Mich App 773; 321 NW2d 810 (1982). There, a panel of our Court adopted the majority rule that a private hospital has the power to appoint and remove members of its professional staff at will without judicial intervention. *Id.* at 778-779. The *Hoffman* rule preventing judicial intervention in these staffing decisions has been applied to preclude suits brought against both private hospitals and individual defendants who participated in the review process that resulted in an adverse staffing decision. *Sarin v Samaritan Health Center*, 176 Mich App 790; 440 NW2d 80 (1989); *Veldhuis v Central Michigan Community Hosp*, 142 Mich App 243; 369 NW2d 478 (1985). The *Hoffman* rule "precludes judicial review of both a private hospital's decision on staff privileges and the method by which the hospital personnel reached that

decision." *Veldhuis, supra* at 247. Plaintiffs cannot elude the *Hoffman* rule merely by alleging tort and contract claims rather than directly challenging the staffing decisions because those claims could not be reviewed "without intervening in the hospital's decision and interfering with the peer review process." *Sarin, supra* at 795; see, also, *Bhogaonker v Metropolitan Hosp*, 164 Mich App 563, 566; 417 NW2d 501 (1987); *Dutka v Sinai Hosp of Detroit*, 143 Mich App 170, 175; 371 NW2d 901 (1985).

Plaintiffs argue that the *Hoffman* rule precluding judicial review of private hospital staffing decisions should not apply in this case because there is a factual question regarding whether defendants acted with malice. We disagree. The *Hoffman* rule has been applied to prevent suit against defendants "who allegedly intentionally and improperly instigated and conducted the malicious investigation of [the] plaintiff" in *Sarin, supra* at 792. Contrary to plaintiff's argument, the peer review immunity statute, MCL 331.531; MSA 14.57(21), does not create a cause of action for malice where otherwise a suit might not be brought. *Long v Chelsea Hosp*, 219 Mich App 578, 583-585; 557 NW2d 157 (1996). Under *Hoffman*, as discussed above, plaintiffs' contract and tort claims are barred and the statute does not change that result. This understanding of the peer review immunity statute does not make its provisions a nullity; for example, while the *Hoffman* rule provides protection for private hospitals' staffing decisions even where malicious conduct is alleged, such allegations could be maintained with respect to a public hospital's staffing decisions.

Plaintiffs also alleged that defendants singly or in concert acted to restrain trade or commerce in a relevant market in violation of § 2 of the Michigan Antitrust Reform Act, MCL 445.772; MSA 28.70(2). Defendants contend, and the trial court agreed, that plaintiffs' cause of action must fail because this case falls under § 4(4) of the act, which provides:

> This act shall not apply to a transaction or conduct specifically *authorized under the laws of this state* or the United States, or specifically authorized under laws, rules, regulations, or orders administered, promulgated, or issued by a regulatory agency, board, or officer acting under statutory authority of this state or the United States. [MCL 445.774(4); MSA 28.70(4)(4); emphasis added.]

In *Sarin v Samaritan Health Center*, 813 F2d 755 (CA 6, 1987), the plaintiff brought suit following the termination of his staff privileges, alleging that the defendant hospital had violated, among others, the Michigan Antitrust Reform Act. The Sixth Circuit held that because hospitals are required to maintain a peer review system under Michigan law,[1] the district judge correctly determined that the persons participating in that process are exempt from challenge for their actions under the statute. *Id.* at 760. We agree with the *Sarin* analysis, and conclude that the trial court properly granted summary disposition of the restraint of trade claims.

We affirm.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ E. Thomas Fitzgerald

[1] See MCL 333.21513; MSA 14.15(21513).